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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 TERRI SMITH and MICHELE
18 SMITH FREGOSO,

19 Plaintiffs,

20 vs.

21 STONEBRIDGE LIFE
22 INSURANCE COMPANY,

23 Defendant.

Case No. C 08-01466 JCS

Mag. Judge Joseph C. Spero

CASE MANAGEMENT
STATEMENT; JOINT REPORT AND
DISCOVERY PLAN

[Fed. R. Civ. P. 26(f) and Local Rule
16-9.]

Action Filed:
Case Manag. Conf:

Sept. 5, 2007
June 20, 2008

1 TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF
 2 RECORD:

3 This combined Case Management Statement and Joint Report and Discovery
 4 Plan is submitted pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 16-
 5 9, and the Court's March 17, 2008 Order Setting Initial Case Management
 6 Conference. This statement follows a meeting of counsel held on May 28, 2008
 7 between John P. Stennett, Esq. and Barbara A. Casino, Esq. of Stennett/Casino on
 8 behalf of Plaintiffs Terri Smith and Michele Smith Fregoso ("Plaintiffs") and
 9 Joseph E. Laska, Esq. of Manatt, Phelps & Phillips, LLP on behalf of Defendant
 10 Stonebridge Life Insurance Company ("Stonebridge").

11 **1. Jurisdiction and Service**

12 The parties agree that this Court has diversity jurisdiction under 28 U.S.C. §
 13 1332. Plaintiffs originally filed this action on September 5, 2007 in the U.S.
 14 District Court for the Southern District of California. Stonebridge filed its Answer
 15 on October 29, 2007. On November 6, 2007, Stonebridge filed a motion to transfer
 16 this action to this Court on convenience grounds, which was granted by the
 17 Southern District of California on March 12, 2008.

18 No parties remain to be served.

19 **2. Facts**

20 Plaintiffs are the surviving daughters of Geraldine Hall-Hussain, who died in
 21 her home at the age of 59 April 9, 2007. Plaintiffs are the named beneficiaries of an
 22 accidental death and dismemberment policy issued to decedent effective November
 23 7, 2005 (the "Policy"). The Policy provided accidental death benefits in the amount
 24 of \$50,000 in the event of Ms. Hall-Hussain's accidental death, as defined and
 25 limited by the terms of the Policy.

26 Ms. Hall-Hussain's death was investigated by the Humboldt County
 27 Coroner's Office. At the scene of Ms. Hall-Hussain's death, the Deputy Coroner
 28 found a prescription bottle for Oxycodone that had been prescribed by Ms. Hall-

1 Hussain's physician, Dr. Chen. According to the label on the bottle, the
 2 prescription, which had been filled on March 27, 2007, contained 180 tabs of 40mg
 3 Oxycontin. The Deputy Coroner located only one Oxycodone tablet remaining on
 4 the bed.

5 The Coroner's Office investigation discovered that Ms. Hall-Hussain's blood
 6 contained a toxic level of Oxycodone. The Coroner's Office also discovered that
 7 Ms. Hall-Hussain had been prescribed Oxycodone by her physician for chronic
 8 pain. Based on the blood levels found, the Coroner's Office concluded that Ms.
 9 Hall-Hussain took more than the prescribed amount of Oxycodone.

10 Following the investigation, the Humboldt County Coroner's Office reported
 11 in the death certificate issued on April 26, 2007 that the cause of Ms. Hall-
 12 Hussain's death was "Oxycodone intoxication." The death certificate also indicated
 13 that the means of death was "accidental" with the finding that "decedent took an
 14 accidental overdose of Oxycodone."

15 Plaintiffs submitted a claim for benefits to Stonebridge on April 27, 2007.
 16 As part of Stonebridge's investigation of the claim, it contacted the Humboldt
 17 County Coroner's Office, Ms. Hall-Hussain's treating physician and Ms. Hall-
 18 Hussain's pharmacy in Eureka, and received documentation from each. By letter
 19 dated June 12, 2007, Stonebridge notified Plaintiffs that it was denying their claim
 20 for accidental death benefits under the following two Policy exclusions:

21 No benefit shall be paid for injury that:

22 3. is caused by or results from the Covered Person's
 23 taking or using any narcotic, barbiturate or any other drug
 24 unless taken or used as prescribed by a Physician;

25 * * *

26 7. is due to disease, bodily or mental infirmity, or
 27 medical or surgical treatment of these.

28 By letter dated July 20, 2007, Plaintiffs' counsel asked Stonebridge to
 reconsider its denial of death benefits in light of California Insurance Code Section

1 10369.12 and the case of Hummel v. Continental Casualty Insurance Company, 254
 2 F.Supp.2d 1183 (D. Nev. 2003). Following Stonebridge's reiteration of its denial,
 3 this lawsuit for breach of contract and breach of the implied covenant of good faith
 4 and fair dealing was filed on September 5, 2007.

5 The parties do not disagree with the finding of the Humboldt County
 6 Coroner's Office that the cause of Ms. Hall-Hussain's death was "Oxycodone
 7 intoxication." They do disagree with the finding that Ms. Hall-Hussain's death was
 8 "accidental" and further disagree regarding the application of the two exclusions in
 9 light of the cause and manner of death.

10 The parties also disagree as to whether or not the underlying facts of
 11 Stonebridge's investigation and denial of benefits constitutes bad faith.

12 The parties reserve the right to raise additional disputed issues of fact.

13 **3. Legal Issues**

14 Defendant asserts that decedent did not take her Oxycodone "as prescribed"
 15 by her physician and thus Ms. Hall-Hussain's death is excluded under the Policy's
 16 "drug exclusion."

17 Plaintiffs assert that Stonebridge's "drug exclusion" is overbroad and
 18 violative of California law. An accidental death and dismemberment policy is
 19 considered a disability policy under Insurance Code Section 106. The Insurance
 20 Code sets forth provisions that must be contained within disability policies and also
 21 sets for the exclusions that may be included in disability policies. Plaintiff contends
 22 that no limitations or exclusions are allowed in disability policies which are "less
 23 favorable in any respect to the insured or the beneficiary." Cal. Ins. Code §
 24 10369.1.

25 Insurance Code Section 10369.12 provides:

26 A disability policy may contain a provision in the form set
 27 forth herein.

28 Intoxicants and controlled substances: The insurer shall
 not be liable for any loss sustained or contracted in

1 consequence of the insured's being intoxicated or under
 2 the influence of any controlled substance unless
 3 administered on the advice of a physician.

4 Plaintiff contends that courts have interpreted the above quoted language as
 5 not applying where the cause of death is an overdose of prescribed medication,
 6 even where a person takes more than was prescribed by their physician. Hummel v.
7 Continental Casualty Insurance Company, 254 F.Supp.2d 1183, 1189 (D. Nev.
 8 2003).

9 Defendant Stonebridge disagrees with Plaintiffs' analysis for three reasons.
 10 First, Stonebridge asserts that the provision relied upon by Plaintiffs, Insurance
 11 Code Section 10369.12, applies only to group disability insurance and does not
 12 apply to individual disability policies insuring only one person, such as the Policy
 13 issued to Ms. Hall-Hussain. Cal. Ins. Code § 102709(c). Second, Stonebridge
 14 asserts that, in any event, the Insurance Code permits the Department of Insurance
 15 to approve policy exclusions that are different than the provisions set forth in
 16 Insurance Code Section 10369, and that such approval was obtained by Stonebridge
 17 regarding the Policy in this case. Third, Stonebridge contends that, in any event,
 18 the Policy's "drug limitation" is not less favorable to Plaintiffs than the language in
 19 Insurance Code Section 10369.12.

20 Defendant Stonebridge also asserts that the "medical treatment" exclusion
 21 precludes coverage. Plaintiffs disagree and assert that it was not the medical
 22 treatment that was the proximate cause of death, rather it was the "accidental
 23 overdose" of Oxycodone. Heighley v. J.C. Penney Life, 257 F.Supp.2d 1241
 24 (C.D.Cal. 2003). Furthermore, Plaintiffs assert that as applied in this case the
 25 "medical treatment" exclusion is also violative of California Insurance Code §
 26 10369.12. Stonebridge disagrees with Plaintiffs' analysis of these authorities.

27 The disputes under the first cause of action for breach of contract appear to
 28 be primarily legal. Under the second cause of action for bad faith, the parties will

1 likely disagree on whether or not Stonebridge's conduct was reasonable and
 2 whether or not that fact may be determined as a matter of law.

3 The parties reserve the right to raise additional disputed issues of law.

4 **4. Motions**

5 As discussed above, Plaintiffs originally filed this action on September 5,
 6 2007 in the Southern District of California. On November 6, 2007, Stonebridge
 7 filed a motion to transfer this action to this Court on convenience grounds, which
 8 was granted by the Southern District of California on March 12, 2008.

9 The parties intend to file cross-motions for partial summary judgment on
 10 Plaintiffs' claim for breach of contract. The proposed briefing schedule for these
 11 motions is set forth below in Section 17. Depending upon the outcome of those
 12 motions, the parties reserve their right to file additional dispositive motions. In that
 13 regard, Stonebridge specifically reserves the right to bring motions for partial
 14 summary judgment on Plaintiffs' claims for breach of the implied covenant of good
 15 faith and fair dealing and punitive damages if its motion for partial summary
 16 judgment on the breach of contract claim is not granted.

17 **5. Amendment of Pleadings**

18 The parties do not anticipate any amendments to the pleadings at this time.

19 **6. Evidence Preservation**

20 The parties do not currently anticipate any issues regarding evidence
 21 preservation.

22 **7. Disclosures**

23 The parties served their respective Initial Disclosures via U.S. mail on
 24 February 1, 2008.

25 **8. Discovery (Including the Parties' Discovery Plan)**

26 Plaintiffs have conducted or will conduct discovery on the following issues:
 27 whether the insured's death was a covered accidental injury, not subject to any
 28 exclusions, under the Policy; whether the exclusions relied upon by Stonebridge to

1 deny Plaintiffs' claim comply with California law; whether Stonebridge acted
 2 unreasonably in denying Plaintiffs' claim for benefits as alleged in the Complaint;
 3 and claims practices, claims handling guidelines, policy interpretation, and other
 4 claims issues pertaining to adjusting accidental death claims.

5 Specifically, Plaintiffs have served interrogatories, requests for production
 6 and request for admissions, to which Stonebridge has responded. If Plaintiffs
 7 prevail on their motion for partial summary judgment motion on their breach of
 8 contract claim, they anticipate taking the depositions of Stonebridge's witnesses.

9 Stonebridge has conducted or will conduct discovery on the following issues:
 10 the insured's medical history and treatment and her use of prescription drugs; the
 11 nature and cause of the insured's death and the circumstances surrounding it;
 12 Plaintiffs' involvement in Stonebridge's claim investigation; the nature and extent
 13 of Plaintiffs' alleged damages; and Plaintiffs' efforts, if any, to mitigate those
 14 alleged damages.

15 Stonebridge has taken the depositions of Dr. Chia Chen (Ms. Hall-Hussain's
 16 treating physician) and Deputy Coroner Roy Horton in Eureka, California.
 17 Stonebridge reserves the right to conduct additional discovery, including but not
 18 limited to taking the depositions of Plaintiffs, Calvin Hall (Ms. Hall-Hussain's
 19 brother), and additional third-party witnesses.

20 The parties agree that discovery need not be conducted in phases or limited
 21 to focus upon certain issues.

22 The parties do not anticipate any issues regarding disclosure or discovery of
 23 electronically stored information. Likewise, the parties do not anticipate any issues
 24 regarding claims of privilege or of protection as trial-preparation materials, except
 25 that the parties reserve their rights to raise appropriate claims of privilege and
 26 protection as permitted by law.

27 The parties disagree on whether there should be changes to the limitations on
 28 discovery set forth under the Federal Rules of Civil Procedure or the applicable

1 Local Rules. Plaintiffs contend that due to the complexity of this case (bad faith)
 2 there may be a need to enlarge the limitations on discovery. Stonebridge contends
 3 that this case is not complex and further contends that there need not be any
 4 changes to the limitations on discovery.

5 **9. Class Actions**

6 This is not a class action.

7 **10. Related Cases**

8 The parties are not currently aware of any related cases or proceedings in any
 9 jurisdiction.

10 **11. Relief**

11 Plaintiffs seek \$50,000 in contract damages, plus interest, as well as an
 12 unspecified amount of emotional distress damages, punitive damages, and
 13 attorneys' fees and costs.

14 **12. Settlement and ADR**

15 The parties participated in an Early Neutral Evaluation before Magistrate
 16 Judge McCurine in the Southern District of California before this action was
 17 transferred to this Court. The case did not settle at that time. The parties believe
 18 that settlement is unlikely to occur before the Court rules on the parties' proposed
 19 cross-motions for summary judgment on Plaintiffs' claim for breach of contract.
 20 As a result, on May 30, 2008, this Court excused the parties from their obligations
 21 under the ADR Local Rules pending the rulings on those motions.

22 **13. Consent to Magistrate Judge For All Purposes**

23 The parties have consented to have Magistrate Judge Spero conduct all
 24 further proceedings including trial and entry of judgment.

25 **14. Other References**

26 The parties agree that this case is not suitable for reference to binding
 27 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
 28

15. Narrowing of Issues

The parties believe that the issue of coverage under the Policy, a threshold issue in this case, will be decided via the parties' cross-motions for partial summary judgment. If Plaintiffs prevail on those cross-motions and the case proceeds, Stonebridge believes that Plaintiffs' claims for breach of the implied covenant of good faith and fair dealing and punitive damages may be resolved as a matter of law by a motion for partial summary judgment.

16. Expedited Schedule

The parties agree that this case need not be handled on an expedited basis.

17. Scheduling

The parties propose filing cross-motions for partial summary judgment on Plaintiffs' claim for breach of contract on the following timetable:

Cross-motions filed: July 1, 2008

Oppositions filed: July 15, 2008

Reply briefs filed: July 22, 2008

Hearing: July 28, 2008

Assuming that the Court approves this proposed briefing schedule and issues an order on the parties' cross-motions for summary judgment within 30 days of the suggested hearing date, the parties propose the following additional pre-trial dates:

Discovery cut-off: December 1, 2008

Deadline to file additional dispositive motions: January 12, 2009

Deadline to disclose expert witnesses: March 13, 2009

Deadline to disclose supplemental experts: March 27, 2009

Expert discovery cut-off: April 17, 2009

Pretrial Conference: April 27, 2009

Trial: May 11, 2009

Trial

18. Trial

The parties estimate that the jury trial of this matter will last 3-5 days.

1 **19. Disclosure of Non-party Interested Entities or Persons**

2 The parties filed their respective Notices of Interested Parties in the Southern
 3 District of California before this action was transferred to this Court.

4 Pursuant to Local Rule 16-9, the parties restate that Plaintiffs and their
 5 attorneys at Stennett/Casino are interested persons.

6 Defendant Stonebridge Life Insurance Company is 100% owned by
 7 Commonwealth General Corporation which is not publicly traded.

8 Both Stonebridge Life Insurance Company and its parent are members of the
 9 AEGON Group. The AEGON Group, through its member companies, is a leading
 10 international insurance group with its headquarters in The Hague, the Netherlands.
 11 The principal market for common shares of AEGON, N.V. is Euronext Amsterdam.
 12 Common shares of AEGON N.V. are listed on the NYSE and the Frankfort,
 13 London, and Tokyo exchanges as well as the SWX Swiss Exchange.

14 **20. Other matters**

15 Except as described above, the parties are not currently aware of any other
 16 matters that may facilitate the just, speedy and inexpensive disposition of this
 17 matter.

19 Dated: June 13, 2008

MANATT, PHELPS & PHILLIPS, LLP

21 By: /s/ Joseph E. Laska

22 Joseph E. Laska
 23 *Attorneys for Defendant*
 STONEBRIDGE LIFE INSURANCE
 COMPANY

24 Dated: June 13, 2008

STENNETT/CASINO

26 By: /s/ John P. Stennett

27 John P. Stennett
 28 *Attorneys for Plaintiffs*
 TERRI SMITH AND MICHELE
 SMITH FREGOSO

PROOF OF SERVICE

1 I, Nancy Tokuda, declare:

2 I am a citizen of the United States and employed in Los Angeles County, California. I am
 3 over the age of eighteen years and not a party to the within-entitled action. My business address
 4 is 11355 West Olympic Boulevard, Los Angeles, California 90064-1614. On June 13, 2008, I
 5 served a copy of the within document(s):

6 **CASE MANAGEMENT STATEMENT; JOINT REPORT AND
 DISCOVERY PLAN**

7 by transmitting via facsimile the document(s) listed above to the fax number(s) set
 8 forth below on this date before 5:00 p.m.

9 by placing the document(s) listed above in a sealed envelope with postage thereon
 10 fully prepaid, in the United States mail at Los Angeles, California addressed as set
 forth below.

11 by placing the document(s) listed above in a sealed Federal Express envelope and
 12 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
 13 Express agent for delivery.

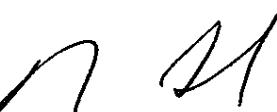
14 by personally delivering the document(s) listed above to the person(s) at the
 address(es) set forth below.

15 Stennett/Casino
 16 John P. Stennett, Esq.
 17 Barbara A. Casino, Esq.
 501 W. Broadway, Suite 1340
 San Diego, CA 92101

18 I am readily familiar with the firm's practice of collection and processing correspondence
 19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
 20 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
 motion of the party served, service is presumed invalid if postal cancellation date or postage
 meter date is more than one day after date of deposit for mailing in affidavit.

21 I declare that I am employed in the office of a member of the bar of this court at whose
 22 direction the service was made.

23 Executed on June 13, 2008, at Los Angeles, California.



24
 25 Nancy Tokuda
 26
 27
 28